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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

September 30, 1975

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer

Department of Defense

National Security Council

Arms Control & Disarmament Agency

Department of Justice

Department of the Interior

- Department of Health, Education
and Welfare

- Department of Agriculture

- Department of Commerce

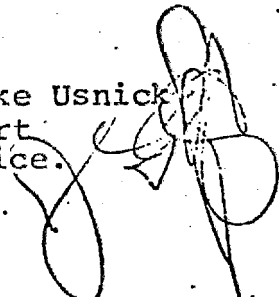
- Council on Environmental Quality

SUBJECT: State Department draft proposal "To implement the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction."

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than OCTOBER 10, 1975.

Questions should be referred to Mike Usnick (103 x4580) or to George R. Gilbert (103 x4710), the legislative analyst in this office.


James F. C. Hyde, Jr. for
Assistant Director for
Legislative Reference

Enclosures



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DEPARTMENT OF STATE

Washington, D.C. 20520

SEP 26 1975

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D.C. 20503

Dear Mr. Lynn:

In accordance with established procedure, there is transmitted herewith a draft bill in implementation of the Convention on the Prohibition of the Development, Production, and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, together with a sectional analysis of the bill and draft transmittal letters to the Congress.

The Convention was ratified by President Ford on January 22, 1975, and entered into force on March 26, 1975. Implementing legislation is required by Article IV of the Convention which obligates the United States to take any necessary measures, in accordance with its constitutional processes, to ensure that the activities prohibited by Article I do not take place within its territory, under its jurisdiction, or under its control anywhere. Article II of the Convention requires that all biological weapons be destroyed or diverted to peaceful purposes not later than nine months after the entry into force of the Convention. For these reasons, implementing legislation should be enacted promptly. Please inform this office, within 15 days, whether there is any objection to the submission of this proposal to the Congress for its consideration.

Sincerely,

Robert J. McCloskey
Assistant Secretary for
Congressional Relations

Enclosure:
As stated

Dear Mr. President:

Enclosed for your consideration and appropriate reference is a legislative proposal in implementation of the Convention on the Prohibition of the Development, Production, and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction. The Convention, a copy of which is attached for your information, entered into force on March 26, 1975. Legislation to implement these undertakings was originally submitted to the Congress on May 18, 1973.

The Convention provides in Article I that the Parties undertake never in any circumstances to develop, produce, stockpile, acquire or retain biological agents or toxins, of types and in quantities that have no justification for peaceful purposes, as well as weapons, equipment and means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict. Article II requires that

The Honorable
Nelson D. Rockefeller
President of the U.S. Senate

all agents, toxins, weapons, equipment and means of delivery specified in Article I be destroyed or diverted to peaceful purposes not later than nine months after the entry into force of the Convention. Article IV establishes the obligation of each Party to take, in accordance with its constitutional processes, any necessary measures to ensure that the activities prohibited in Article I do not take place within its territory, under its jurisdiction, or under its control anywhere.

The ^{present} draft bill, together with provisions of existing legislation, would fulfill our undertaking in Article IV of the Convention. Pertinent existing legislation includes munition control provisions of the Mutual Security Act of 1954, the Export Administration Act of 1969, as amended; and the Transportation of Dangerous Articles Act. The draft bill would add a new chapter on Biological Weapons to Title 18 of the United States Code. It contains two sections which are explained in detail in the accompanying sectional analysis. In essence it adapts the language of the Convention to the requirements of a criminal statute.

It would be appreciated if you would lay this proposal before the Senate. A similar proposal has been submitted to the Speaker of the House of Representatives.

The Office of Management and Budget advises that enactment of the proposed legislation would be consistent with the objectives of the Administration.

Sincerely,

Robert J. McCloskey
Assistant Secretary for
Congressional Relations

Enclosure
As Stated.

Dear Mr. Speaker:

Enclosed for your consideration and appropriate reference is a legislative proposal in implementation of the Convention on the Prohibition of the Development, Production, and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction.

The Convention, a copy of which is attached for your information, entered into force on March 26, 1975. Legislation to implement these undertakings was originally submitted to the Congress on May 18, 1973.

The Convention provides in Article I that the Parties undertake never in any circumstances to develop, produce, stockpile, acquire or retain biological agents or toxins, of types and in quantities that have no justification for peaceful purposes, as well as weapons, equipment and means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict. Article II requires that

The Honorable
Carl Albert
Speaker of the U.S. House of Representatives

all agents, toxins, weapons, equipment and means of delivery specified in Article I be destroyed or diverted to peaceful purposes not later than nine months after the entry into force of the Convention. Article IV establishes the obligation of each Party to take, in accordance with its constitutional processes, any necessary measures to ensure that the activities prohibited in Article I do not take place within its territory, under its jurisdiction, or under its control anywhere.

The^{present}/draft bill, together with provisions of existing legislation, would fulfill our undertaking in Article IV of the Convention. Pertinent existing legislation includes munition control provisions of the Mutual Security Act of 1954, the Export Administration Act of 1969, as amended, and the Transportation of Dangerous Articles Act. The draft bill would add a new chapter on Biological Weapons to Title 18 of the United States Code. It contains two sections which are explained in detail in the accompanying section-by-section analysis. In essence, it adapts the language of the Convention to the requirements of a criminal statute.

It would be appreciated if you would lay this proposal before the House of Representatives. A similar proposal has been submitted to the President of the Senate.

- 3 -

The Office of Management and Budget advises that enactment of the proposed legislation would be consistent with the objectives of the Administration.

Sincerely,

Robert J. McCloskey
Assistant Secretary
for Congressional Relations

Enclosures
As Stated.

the Development, Production and Stockpiling of Bacteriological
(Biological) and Toxin Weapons and on Their Destruction.

Be it enacted by the Senate and the House of
Representatives of the United States of America in Congress
assembled, That (a) Title 18, United States Code, is amended
by adding after Chapter 9 the following new Chapter:

"Chapter 10.--BIOLOGICAL WEAPONS.

"Sec.

"175. Definition.

"176. Biological weapons.

"§ 175. Definition.

"As used in this chapter, 'biological weapon' means--

"(a) (1) A microbial organism or other biological
agent; or

(2) a toxin of any origin or method of
production;

of a type harmful to human beings, animals, or plants, and intended
for use in armed conflict or any other hostile purpose; or

"(b) any apparatus, equipment, device, or means of
delivery specifically designed to disseminate an organism,
agent, or toxin as defined in subsection (a) in armed conflict
or for any other hostile purpose.

"(a) Whoever being a national of the United States, or otherwise under or within the jurisdiction or control of the United States, knowingly develops, produces, possesses, stockpiles, transfers, acquires, or retains any biological weapon, within or without the territory of the United States, shall be fined not more than \$100,000 or imprisoned for not more than 15 years, or both.

"(b) The District Courts of the United States, including the Courts enumerated in Section 460 of Title 28, United States Code, shall have jurisdiction in proceedings instituted by the Attorney General to enjoin development, production, possession, stockpiling, transfer, acquisition, or retention by any person under or within the jurisdiction or control of the United States of (1) any microbial organisms or other biological agents or toxins of any origin or method of production of a type harmful to human beings, animals, or plants, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes; or (2) any apparatus, equipment, device, or means of delivery specifically designed to disseminate any such organism, agent or toxin in armed conflict or for any other hostile purpose. For the purpose of this Section, American Samoa

shall be included within the judicial district of the District Court of the United States for the District of Hawaii and the Trust Territory of the Pacific Islands shall be included within the judicial districts of both the District Court of the United States for the District of Hawaii and the District Court of Guam.

"(c) Any microbial organisms or other biological agents or toxins of any origin or method of production of a type harmful to human beings, animals, or plants, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes, or any apparatus, equipment, device, or means of delivery specifically designed to disseminate any such organism, agent or toxin in armed conflict or for any other hostile purpose, shall be subject to seizure and forfeiture pursuant to the procedures set forth in Section 511 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (84 Stat. 1276).

"(d) In case of a threat to use any biological weapon within the territory or jurisdiction of the United States the Attorney General may request appropriate assistance from any Federal State, or local agency, including the Army, Navy, and Air Force, any statute, rule or regulation to the contrary, notwithstanding."

(b) The analysis of Title 18, United States Code, is amended by adding after the item for Chapter 9 the following new item:

"10. Biological Weapons-----175".

SECTIONAL ANALYSIS

Approved For Release 2005/06/02 : CIA-RDP77M00144R001100180028-4

The Bill would add to Title 18 of the United States Code a new Chapter 10, "Biological Weapons," consisting of new Sections 175 and 176.

Proposed Section 175 defines "biological weapon" for the purposes of this new Chapter. The definition includes (a) microbial organisms, other biological agents, and toxins (whatever their origin or method of production) -- all of which are dealt with in Clause (1) of Article I of the Convention, and (b) means for the dissemination of such agents or toxins -- which are dealt with in Clause 2 of Article I of the Convention. In adapting Clause (1) to the requirements of a criminal statute, the terms of the Convention have been elaborated and the definition stated in terms of the purpose for which the substances are intended. The second half of the definition is identical in substance with Clause (2) of Article I of the Convention, with the word "apparatus" substituted for the word "weapons," since the latter is now the subject of the entire Section 175, and the word "use" replaced by the word "disseminate" to conform with the terminology of Section 1516 of Title 50 of the United States Code. As a practical matter, the latter two terms are identical, since any use of substances in this context would entail their dissemination. Because the word "designed" might be misconstrued to mean a device ^{merely} having the capability to disseminate certain substances rather than

device intended to disseminate such substances, the phrase "specifically designed" is employed in the Bill.

The Bill does not reach peaceful activities such as development or production of biological agents or toxins for the protection of man, animals, plants, and the environment from pests and diseases, or for immunization, therapy, or medical research. The Convention specifically exempts agents and toxins used for "prophylactic, protective or other peaceful purposes" In explanation of those provisions, the Secretary of State noted:

"The word 'prophylactic' refers to activities related to the protection of the human body from the effects of organisms or substances to which an individual might be directly exposed. It encompasses medical activities such as diagnosis, therapy and immunization, and related research. The term 'protective' applies to the development of such equipment as decontamination systems, protective masks and clothing, air and water filtration systems, and detection and warning devices. Laboratory quantities of certain agents and toxins might well be required for research and testing in these areas." Ex. Doc. Q, 92nd Cong., 2d Sess. at 3.

On the other hand, the Secretary added in his summation that

". . . the terms 'prophylactic' and 'protective' are not intended to convey any broader meaning which would in any way permit possession of biological agents or toxins for weapons purposes on the theory that such weapons were for 'defensive' warfare, retaliation or deterrence." Id.

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knowingly developing, producing, possessing, stockpiling, transferring, acquiring or retaining biological weapons. The obligation contained in Article IV of the Convention states that any necessary implementing measures should be applicable "within the territory of such State, under its jurisdiction or under its control anywhere." The jurisdictional provision of the proposed Section of the Bill meets this obligation. The penalty provision parallels Sections 2201 and 2301 of the proposed Federal Criminal Code.

Subsection (b) permits the Attorney General to institute suits in the United States District Courts for an injunction against developing, producing, possessing, stockpiling, transferring, acquiring, or retaining (1) any microbial organisms or other biological agents or toxins of any origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes; or (2) any apparatus, equipment, device, or means of delivery specifically designed to disseminate any such organism, agent or toxin in armed conflict or for any other hostile purpose. Subsection (b)(1) closely parallels the language of Article I of the Convention and would enable the Government to obtain an injunction without proving that the microbial organisms biological agents or toxins were "intended for use in armed conflict or any other hostile purpose." In addition, the requirement of a "knowing" violation contained in subsection (a) has been deleted from subsection (b) to permit the United States to seek an injunction whether or not the defendant knew the character of the substances in question.

Subsection (c) utilizes the seizure and forfeiture procedures contained in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (Title 21, United States Code, Section 881), and is identical in scope to subsection (b).

Subsection (a) is a response to the recognition that a terrorist group threatens to use a biological weapon, more than the investigative focus of the Federal Bureau of Investigation will be necessary, in terms of manpower and expertise, to meet and neutralize the threat. Consequently, the Federal Bureau of Investigation may, through the Attorney General or his designated Assistant, request assistance from other Federal, State, or local agencies including the Army, Navy, or Air Force. The provision parallels similar provisions in Sections relating to attacks upon members of Congress, the President, or Vice President (Title 18, United States Code, Sections 351(g) and 1751(i)).

Together, subsections (a)-(d) of Section 176 would implement the requirement of Article IV of the Convention that the United States, "in accordance with its constitutional procedures, take any necessary measures to prohibit and prevent the development, production, stockpiling, acquisition or retention" of any biological weapon within its territory, jurisdiction or control.

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MEMORANDUM FOR: *Should get copies*

cc: Mike Usnick/ OMB-IAD
Rm 8227
Executive Office Bldg.

Michael Matheson
L/SUNA
Rm 6418C
New State
21st & Virginia
Washington, D.C. 20520

Approved For Release 2005/06/02 : CIA-RDP77M00144R001100180028-4

MEMORANDUM FOR
Approved For Release 2005/06/02 : CIA-RDP77M00144R001100180028-4

Dr. David Elliott
Senior Staff
National Security Council
Old Executive Office Building
Washington, D.C. 20506

Room 392

Approved For Release 2005/06/02 : CIA-RDP77M00144R001100180028-4
Date

☐ UNCLASSIFIED ☐ INTERNAL ☐ CONFIDENTIAL ☐ SECRET

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ROUTING AND RECORD SHEET

ILLEGIB

SUBJECT: (Optional)

FROM:

Legislative Counsel
7D35 HQ

EXTENSION

NO.

DATE

20 October 1975

25X1

TO: (Officer designation, room number, and building)

DATE

OFFICER'S
INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

RECEIVED

FORWARDED

1.

Director

10/22/75

2.

6E45 HQ
Director

10/22

10/24

wcc
Kip

3.

4.

5.

OLC
7D35 HQ

6.

7.

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13.

14.

15.

If you approve, we intend to submit the attached report on draft legislation to implement the Convention on the prohibition of biological weapons. [redacted] was asked for our views on this draft legislation by Dr. Elliott of the National Security Council. This response was drafted in OGC and reviewed by this office. We intend to send copies of this letter to OMB and State Department.

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George L. Cary
Legislative Counsel

OK with DOST.

OK -
WEC

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FORM
3-62

610

USE PREVIOUS
EDITIONS

☐ SECRET

☐ CONFIDENTIAL

☐ INTERNAL
USE ONLY

☐ UNCLASSIFIED

25X1

TO MR. CARY

FROM: WPB

DATE 20 October 1975

SUBJECT: Toxins Draft Legislation

SUSPENSE DATE

*Bill
pls route to
DCI thru DD/SAT*

NOTE: The attached letter to the National Security Council was drafted in OGC and reviewed by me and LLM. [redacted] agreed that reports on draft legislation should go out from OLC. The letter itself is addressed to Dr. Elliott, who originally asked [redacted] for our views. We are also forwarding copies to OMB and to the individual in State Department who is responsible for drafting this proposal and with whom OGC has already been in contact.

25X1

ILLEGIB

COORDINATED WITH (list names as well as offices):

ILLEGIB

[redacted]	OGC
Name	Office
	DDS&T
Name	Office
Name	Office

ACTION REQUIRED BY GLC: Sign letter to Elliott and buckslip to Director